

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

JEFFREY O. SWOPE,

Plaintiff,

v.

USDC SDNY
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DATE FILED: 10/22/07

07 Cv. 6921 (BSJ)

Order

FIDUCIARY ASSET MANAGEMENT, L.L.C.

Defendant.

BARBARA S. JONES
UNITED STATES DISTRICT JUDGE

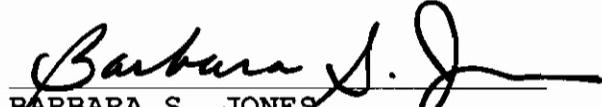
This contract action is before this Court following removal from the Supreme Court, County of New York in August 2007.

Another action regarding the same issues is currently pending in the Eastern District of Missouri (Autrey, J.). In a letter dated October 16, 2007, Defendant Fiduciary Asset Management, L.L.C. notified this Court of an order issued by Judge Autrey, in which that Court denied Swope's motion to dismiss that action in favor of the action before this Court. That Court noted that the action before it "was not filed first in a race to the courthouse," and concluded that "[b]ased on the circumstances surrounding the filing of the New York action, the Court is thoroughly satisfied that the first filed rule should not be abrogated." Opinion, Memorandum and Order, No. 4:07CV301 HEA, Oct. 12, 2007, at 8.

Under the first filed rule, "[w]here there are two competing lawsuits, the first suit should have priority, absent

the showing of balance of convenience . . . or . . . special circumstances . . . giving priority to the second." First City National Bank and Trust Co. v. Simmons, 878 F.2d 76, 79 (2d Cir. 1989). Here, Plaintiff concedes that "[g]iven Judge Autrey's ruling, it appears . . . that this Court is obliged to defer to the Eastern District of Missouri, since it was there that the first action was filed." (Letter from Todd A. Higgins to the Court, dated Oct. 17, 2007, at 1.) Although the claims in Plaintiff's First Amended Complaint stem from the same underlying facts in the Missouri action, they are not identical; thus, the Court TRANSFERS this action to the Eastern District of Missouri pursuant to 28 U.S.C. § 1404. The Clerk of Court is directed to transfer this case to the Eastern District of Missouri, to be joined with the action already pending there, No. 4:07CV301 HEA.

SO ORDERED:



BARBARA S. JONES
UNITED STATES DISTRICT JUDGE

Dated: New York, New York
October 18, 2007